IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 14725 of 2006(C)

PETITIONER:

ENTHEENKUTTY, S/O. ALAVIKUTTY,
PARAMPAN HOUSE, IRINGALLUR POST,
PARAPPUR, VENGARA, MALAPPURAM DISTRICT.

BY ADV. SRI.P.K.VIJAYAMOHANAN
SMT.RESMI G. NAIR

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
CIVIL STATION, MALAPPURAM.

2. THE PARAPPUR GRAMA PANCHAYAT
REPRESENTED BY THE SECRETARY, P.O. PARAPPUR
(VIA) KOTTAKKAL, MALAPPURAM.

3. THE SUB INSPECTOR OF POLICE,
VENGARA POLICE STATION,
VENGARA, MALAPPURAM.

4. IBRAHIM, SON OF ABU,
KALATHINKAL PARAMBIL, THONIKKADAVU,
PARAPPUR.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
GOVERNMENT PLEADER SRI.RAVI KRISHNAN
SRI.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE COMMUNICATION DTD. 29-9-05 OF R2.**
EXT.P2	**TRUE COPY OF THE COMMUNICATION DTD. 29-10-05 OF R1**
EXT.P3	**TRUE COPY OF THE COMMUNICATION DTD. 12-11-05**
EXT.P4	**TRUE COPY OF THE RESOLUTION DTD.1-2-06 OF R2**
EXT.P5	**TRUE COPY OF THE COMPLAINT DTD. 25-4-06 FILED BY R3 BEFORE R2**
EXT.P6	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.12463/06**
EXT.P7	**TRUE COPY OF THE COMMUNICATION DTD. 26-5-06 FROM THE PANCHAYAT.**
EXT.P8	**TRUE COPY OF THE CIRCULAR DTD.16-4-97 ISSUED BY THE GOVT.**

RESPONDENT'S EXHIBITS

EXT.R2(A)	**TRUE COPY OF THE RESOLUTION ADOPTED BY THE PANCHAYAT.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No.14725 OF 2006

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Dated this the 3rd day of July, 2007

JUDGMENT

Petitioner has approached this court feeling aggrieved by Exts.P1, P2 and P7. He seeks a direction to the first respondent to cause an enquiry into the circumstances under which his office caused to issue Ext.P2 communication.

Case of the petitioner in brief is as follows:

Petitioner commenced the construction of the building on 01/01/2005. On 29/09/2005 by Ext.P1 Panchayat issued stop memo alleging violation of Section 220(b) of the Panchayat Raj Act. By Ext.P2 the District Collector issued direction to the Panchayat and also the police to prevent the construction of the building by the petitioner. According to the petitioner, the alleged complainant before the District Collector expressed the view that he has not filed any complaint (Ext.P3.). By resolution dated 01/02/2006 the Panchayat resolved that Section 220(b) of the Panchayat Raj Act need not be insisted for the constructions

on the sides of the roads vested in the Panchayat. Fourth respondent filed Ext.P5 to stop the construction. Fourth respondent approached this court and this court directed consideration of Ext.P5 by the Panchayat. By Ext.P7 petitioner was directed not to continue the construction of the building.

2. Counter affidavit is filed by second respondent-Panchayat. In the counter affidavit it is interalia stated that the statement of the petitioner that the road that passes through the side of the property where the petitioner is constructing the building is only a pathway and not a Panchayat road is absolutely incorrect. It is stated to be a Panchayat road known as Kuttithara-Anganwadi Road. It is stated that Panchayat had as early as on 06/01/1997 adopted a resolution to the effect that only after leaving 2 meters distance from the Road that the buildings can be constructed (Ext.R2 a). Further it is stated that petitioner has commenced the construction of the building much before the resolution of the Panchayat adopted on 01/02/2006. It is stated that petitioner has not left any distance from the Panchayat road.

3. Petitioner has filed reply affidavit producing Ext.P8

circular, as per which according to the petitioner Panchayat shall notify the roads and inform the public of the same. It is stated that Panchayat has to maintain a " Road List" for application of Section 220(b). It is stated that R2(a) is not in compliance with Ext.P8.

4. Petitioner has a case that it is not a Panchayat road as notified by the Panchayat (para 2). Petitioner relies on the judgment reported in **Thomas Paul and another v. State of Kerala and others** (2006(4) ILR Kerala 690). It is submitted that construction is already over and direction is sought to assign building number to the shop room constructed by the petitioner.

The writ petition is disposed of as follows:

Second respondent will hear the petitioner and the fourth respondent and take a decision in accordance with law on the question as to whether the construction of the building of the petitioner is to be numbered under Section 235 of the Panchayat Raj Act. If the construction made by the petitioner attracts section 220(b) and if the petitioner has violated Section 220(b), it is open to the second respondent to proceed against the said construction so that illegality is removed. In doing so, the

second respondent will consider the question as to whether the building construction is by the side of a road which attracts Section 220(b). Petitioner will be entitled to rely on the judgment of this court in 2006(4) ILR Kerala 690. A decision will be taken in the matter within a period of six weeks from the date of receipt of a copy of this judgment.

(K.M.JOSEPH, JUDGE)

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